Petition

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No.

Jean Philippe Benslimane,
Petitioner

v.

United States of America,
Respondent

Petition for a Writ of Certiorari to
the District of Columbia Court of Appeals

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THE QUESTION PRESENTED

Were the charges against Petitioner so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fifth Amendment?

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981

No.

Jean Philippe Benslimane, Petitioner,

v.

United States of America, Respondent.

Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals entered in the above case on November 16, 1981.

THE QUESTION PRESENTED

Were the charges against Petitioner so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fifth Amendment?

CITATION OF OPINION BELOW

Petitioner was tried in the Superior Court for the District of Columbia by a jury; there is no opinion of that Court. Superior Court Judge Tim Murphy's denials of Petitioner's Motion's for Judgment of Acquittal were oral. (Tr. 50-51). The memorandum opinion of the District of Columbia Court of Appeals, which affirmed Petitioner's conviction and the Trial Court's denial of Petitioner's Motions for Judgment of Acquittal, is printed in Appendix A hereto; it will not be reported in the official reports.

GROUNDS FOR JURISDICTION OF THIS COURT

The judgment of the District of Columbia Court of Appeals was entered on November 16, 1981. Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Amendment V

"No person shall****be deprived of life, liberty, or property, without due process of law****."

STATEMENT OF THE CASE

Petitioner was convicted by a jury in the Superior Court of the District of Columbia for the malicious destruction of two light fixtures one on each side of the front entrance of a building at 1830 R Street, N.W., Washington, D.C., (hereinafter "the building"), in violation of section 22-403 of the District of Columbia Code. A one-year term of probation

and a fine of $1,000.00 were imposed. The question presented for review in this petition arises out of the District of Columbia Court of Appeal's failure to overturn Petitioner's conviction. Petitioner argues before this Court that the only evidence against him was clearly and inherently unsubstantial and insufficient.

In the early morning of September 27, 1981, the morning of the alleged destruction of the two light fixtures, Petitioner closed his restaurant, located at 1647 Connecticut Avenue, N.W. Washington, D.C., and went to a nearby bar, also in the District of Columbia. He then drove back to his restaurant, parked his car in a rear parking space, and walked east on R Street, toward a building at 1722 19th Street, N.W., Washington, D.C. A female friend lived at this address, about one block from his restaurant.

The Petitioner walked a short distance to 19th Street, N.W., and crossed. As he reached the southeast corner of 19th and R Streets, N.W., Petitioner "heard someone screaming." Fearing a mugger, Petitioner did not look for the source of the screaming; he kept walking east on R Street. Ultimately, he reached 1722 19th Street, N.W.

When he was in front of this building, Petitioner was apprehended by District of Columbia Metropolitan Police Officer McDowell. Officer McDowell transported Petitioner to 1830 R Street, N.W. for attempted identification by Mr. Robert J. Middleton, who had reported the incident at issue. Mr. Middleton purported to identify Petitioner as one involved in an alleged act of malicious destruction of property. Mr. Middleton conceded, at trial, however, that the lighting on the street where he had made the identi-

fication "wasn't very bright."

Based on this dubious identification, Petitioner was charged with one count of Malicious Destruction of Property in violation of section 22-403 of the District of Columbia Code, which allegedly occurred at 1830 R Street, N.W., Washington, D.C. He was subsequently arraigned in the Superior Court of the District of Columbia. A jury trial began on May 20, 1980, before Judge Tim Murphy.

The prosecution's sole eyewitness testifying at trial was Mr. Middleton. Mr. Middleton worked as a live-in assistant resident apartment manager at 1830 R Street, N.W., Washington, D.C. According to Mr. Middleton's trial testimony, he was on his way home from visiting with friends around 2:30 a.m., September 27, 1979, when he saw a man standing in front of the building. Mr. Middleton

stated that the man had his hands on the light fixture on the left side of the entrance, and that the light fixture on the right side was already lying on the ground, broken.

He did not specify exactly when, how and by whom the damage to the right-side fixture had been done. At this moment, there was no light on the outside of the entrance. Nevertheless, Mr. Middleton claimed that he was able to identify the man standing on the left side of the entrance. The only lighting came from the lobby of the building.

Mr. Middleton proceeded into the building, went to his apartment, and put down the things he was carrying. He then came back out of the building, and saw a man on his way around the corner. Just then, a police patrol car was pulling up. Mr. Middleton did not testify that he had summoned the police.

He told police officer McDowell, who was driving the patrol car, that a man wearing a green shirt and brown pants had broken the light fixtures in front of the building. By that time, the man standing in front of the building had departed. Officer McDowell canvassed the neighboring area for the suspect. After a few minutes, she observed Mr. Benslimane standing in front of his friend's apartment building at 1722 19th Street, N.W., wearing a green shirt and brown pants. Officer McDowell seized Mr. Benslimane, and brought him to 1830 R Street, N.W. to determine whether Mr. Middleton could make an identification. Mr. Middleton testified, "They asked me was this the guy who was snatching the lights down, and I told them yeah."

At the close of the Government's case, and again at the close of all evidence, Petitioner moved for a Judgment of Acquittal.

His motion was based on the utter lack of substantial evidence presented against him. Both oral motions were denied by Judge Tim Murphy. The jury returned a verdict of quilty, and a sentence was imposed on June 25, 1980.

The Petitioner made a timely appeal of his conviction and the denial of his Motion for Judgment of Acquittal to the District of Columbia Court of Appeals. He based his appeal on the grounds that the only evidence against him was clearly and inherently unsubstantial and insufficient. The District of Columbia Court of Appeals affirmed Petitioner's conviction on November 16, 1981. See Attachment A.

REASONS FOR GRANTING THE WRIT

This petition raises substantial and important questions concerning the

administration of criminal justice in state and federal courts. The question presented herein has been heard and passed upon by this Court in Thompson v. Louisville, 362 U.S. 199 (1960). In that case, this Court stated the issue as follows: "[W]hether the charges against petitioner were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment." Id. at 199. The District of Columbia Court of Appeals violated the holding in Thompson by failing to overturn Petitioner's conviction where the case presented against Petitioner at trial was totally devoid of evidentiary support. The Government's sole eyewitness was inherently incredible, and the testimony presented was clearly contradictory. Therefore, Petitioner's conviction amounts to

conviction and punishment without evidence of his guilt. As such, the conviction violates his right to Due Process of law. Id. at 206.

I. Evidence Presented Against Petitioner at Trial Was Clearly Contradictory and Totally Without Credibility.

As was stated above, the Government's sole eyewitness to testify at trial, Mr. Middleton, worked as a live-in assistant resident apartment manager at 1830 R Street, N.W., Washington, D.C. As such, Mr. Middleton was accountable for the overall conditions in and about the building, and for the security of its tenants. Accordingly, Mr. Middleton had a great personal interest in the apprehension and conviction of a person allegedly responsible for the destruction of the light fixtures on his building. This fact alone minimizes

the value of Mr. Middleton's testimony. Washburn Moen Mfg. Co. v. Beat 'Em All Barbed Wire Co., 143 U.S. 275 (1892). The blatant inconsistencies in Mr. Middleton's testimony, however, virtually render his testimony valueless. These inconsistencies reflect Mr. Middleton's self-serving biases and partiality, and clearly reveal that his testimony was entirely devoid of credibility.

The first inconsistency in Mr. Middleton's tesimony is evident from his first alleged encounter with the person who damaged the light fixtures on his building. Mr. Middleton testified that he was returning home from visiting friends, around 2:30 a.m., on the morning of September 27, 1979, when he noticed a man in the process of maliciously destroying the light fixture on the left side of his building entrance. The right-side fixture already laid on the

ground, broken. Yet, Mr. Middleton, in a remarkably matter-of-fact manner, merely addressed the alleged perpetrator of the destruction with but a few ordinary inquiries, ultimately entered the building, walked to his apartment, and finally put down the things he was carrying. Although the police eventually appeared on the scene, Mr. Middleton never testified that he called the police to report the criminal act he claimed to have witnessed.

The calm and ordinary behavior of Mr. Middleton in the fact of alleged crime committed in his presence severely damages the credibility of his claim that the offense of malicious property destruction occurred at 2:30 a.m. on September 27, 1979. If Mr. Middleton, occupying his position as assistant resident manager, had truly observed the malicious destruction of a light fixture, surely he would have reacted differently.

Surely, even if there had been the slightest attempt to damage building property, an assistant resident manager, such as Mr. Middleton, would have taken far more decisive action than engaging the perpetrator in a brief conversation, before strolling into the building.

A further inconsistency in Mr. Middleton's testimony arises from his description of the man who purportedly destroyed his building's light fixtures. The description given to the police was that of a white male between five-feet-five and five-feet-nine in height, weighing 160 pounds, and wearing a green shirt and brown pants. No description of facial features, or even body build, was given.

Under all the evidence, Mr. Middleton's description fit at least two men.

The first man was the one Mr. Middleton claimed he saw standing in front of the building at 1830 R Street, N.W., Washington, D.C., as Mr. Middleton arrived home. The second man was the one Mr. Middleton saw walking "on his way around the corner" after Mr. Middleton re-emerged from the apartment building. The trial record, however, does not establish whether the description Mr. Middleton provided to the arresting officer was that of the first man, or that of the second man, the one Mr. Middleton observed walking "around the corner." However, the only credible conclusion that can be drawn from the identification testimony is that Mr. Middleton identified the second man. If the description Mr. Middleton provided the police was that of the man standing in front of the building, why were facial features not included? After all, Mr.

Middleton had allegedly stopped and talked to the man. Mr. Middleton even testified that the man turned his face to look at Mr. Middleton. Furthermore, it is only natural that Mr. Middleton's description would not include facial features if the man identified was the second man, the man walking "around the corner."

As such, Mr. Middleton's testimony at most proves that Petioner was the second man, the one walking "around the corner." Petitioner himself testified that he was walking eastward on R Street at about the time Mr. Middleton came out of the building. Yet, rather than implicate Petitioner, this evidence only serves to further vindicate him; it is a virtual certainty that the first man and the second man were not the same. This conclusion results from the fact that the first man, the man who was

standing in front of the building, had ample time to realize that we had been confronted by some one of authority when Mr. Middleton approached him, and that he was in danger of being caught in a criminal act. This man, accordingly, escaped. It simply exceeds the limitations of credibility to assume that while Mr. Middleton was occupied inside, the first man chose to slowly "walk around the corner," rather than running away to avoid apprehension.

Mr. Middleton's recollection of the events was so inconsistent with logic as to suggest they were put together in his own imagination. This inconsistency, together with Mr. Middleton's great self interest in the outcome of the proceedings, leads to but one conclusion. That is, Mr. Middleton, fearing his own liability,

"fingered" Petitioner, the only person unfortunate enough to be in the vicinity when Mr. Middleton re-emerged from his building.

Even assuming that a glimmer of credibility can be gleaned from Mr. Middleton's testimony, it would be more than overshadowed by the extreme unlikelihood that Petitioner's role in the events occuring in the early hours of September 27, 1979 were as Mr. Middleton recounted. Petitioner operated a restaurant business in the neighborhood. Long hours were devoted to the business. Petitioner had worked 15 hours immediately prior to the time of the alleged offense. Only a few hours after closing, he had to prepare to reopen his busy restaurant. Under these circumstances, is very difficult to imagine an overworked, hurried businessman such as Petitioner

loitering in front of a strange building, tugging, pulling and yanking on light fixtures.

II. The Failure of the District of Columbia Court of Appeals to Reverse Petitioner's Conviction Where Clearly Insubstantial Evidence of His Guilt Was Presented at Trial Constitutes a Violation of Petitioner's Fifth Amendment Right to Due Process of Law.

The traditional rule on the standard of guilt in criminal cases is well established. The evidence presented must be so clear and convincing as to permit a jury to find that the defendant is guilty beyond a reasonable doubt. Holt v. United States, 218 U.S. 245, 253 (1910). Yet, while the jury judges the credibility of witnesses, the trial judge plays an active role in implementing the firm rule of law requiring proof beyond a reasonable doubt. This role was described in Hammond v. United States, 75 U.S. App. D.C. 397, 127 F. 2d

752 (C.A. D.C., 1962), as follows:

> Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial judge to instruct the jury to return a verdict for the accused, and when all the substantial evidence is as consistent with innocence as with guilt it is the duty of the appellate court to reverse a judgment against him.

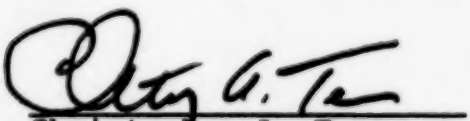
Considering the blatant inconsistancies in the Government's case and the absence of credibility in the sole eyewitness' testimony, it was the duty of the District of Columbia Court of Appeals to reverse Petitioner's conviction. Fifth Amendment, United States Constitution. Its failure to do so resulted in Petitioner's conviction grounded on extremely insubstantial evidence of his guilt. In order to assure that Petitioner and all defendants like him receive

procedural due process in their criminal proceedings, this Court should grant certiorari to reverse Petitioner's conviction.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a writ of certiorari should be granted.

Respectfully submitted,



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ATTACHMENT A

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 80-790

Jean Philippe Benslimane,

Appellant

v. 10182-79

United States,

Appellee

Appeal from the Superior Court
of the District of Columbia
Criminal Division

(Hon. Tim Murphy, Trial Judge)

(Submitted November 10, 1981

Decided November 16, 1981)

BEFORE: Mack, Pryor and Belson,
Associate Judges.

MEMORANDUM OPINION AND JUDGMENT

The appellant challenges his conviction of one count of malicious destruction of property, D.C. Code 1973, § 22-403, claiming that the evidence presented was too speculative and, hence, insufficient to support that conviction. We affirm.

The appellant was accused of destroying property at 1830 R Street, N.W. At trial, the government called two witnesses. The first was the assistant resident manager of the premises at 1830 R Street. He testified that he was entering the building at approximately 2:30 a.m. on September 27, 1979 when he saw the appellant standing by the building's entrance two feet from him. He testified that the lighting fixture on the right side of the entrance had been removed and was lying broken on the ground and that

the appellant was pulling the light fixture on the left side of the door out of the wall. After a short conversation with the appellant the manager went inside and, upon re-emergence, encountered two Metropolitan Police Officers responding to a report of destruction of property at the address. The manager described the perpetrator as a white male, 5'5" - 5'9", 160 pounds with black hair and wearing a green shirt and brown pants. Five minutes later the officers returned with the appellant and the manager identified him as the man who had earlier pulled the light fixtures from his building.

The government then called the arresting officer to testify. She testified that, a few minutes after getting the description, she apprehended the appellant in front of a building at 1722 19th Street, N.W., approximately one block from 1830 R

Street, and returned him to the manager who identified him as the person who had broken the light fixtures. At the end of her testimony the appellant moved for a judgment of acquittal which was denied.

The appellant's case consisted of his testimony that he had, at approximately 2:00 a.m., parked his car at the corner of Connecticut and R Streets, N.W. and proceeded to his girlfriend's apartment at 1722 19th Street where he was apprehended. He denied having been at 1830 R Street. The trial court denied the appellant's renewal of his previous motion for judgment of acquittal and the jury found the appellant guilty. The appellant was sentenced on June 25, 1980 to six months' imprisonment, execution of which was suspended, one year's probation and a $1000 fine.

The misdemeanor destruction of property

has three elements: (1) that the defendant injured or broke or destroyed, or attempted to injure or break or destroy property; (2) that the property was not the defendant's and (3) that the defendant did so maliciously, that is, with intent to injure or break or destroy the property, Nichols v. United States, D.C. App., 343 A.2d 336, 341 (1975), all of which the government must prove beyond a reasonable doubt. A court must deny a motion for a judgment of acquittal if, after looking at the evidence and reasonable inferences drawn therefrom in the light most favorable to the government, it determines that a reasonable mind might fairly find guilt beyond a reasonable doubt. Stewart v. United States, D.C.App., 383 A.2d 330 (1978); Calhoun v. United States, D.C.App., 369 A.2d 605 (1977); Crawford v. United States, 126 U.S.App.D.C.

156, 375 F.2d 332 (1967); Curley v. United States, 81 U.S.App.D.C. 389, 160 F.2d 229, cert. denied, 331 U.S. 837 (1947). The credibility of testimony and the weight to be given thereto is a matter for the determination of the jury as fact-finder. Id. at 392, 160 F.2d at 332.

We find that reasonable minds might fairly have concluded, beyond a reasonable doubt, that the appellant maliciously destroyed the lighting fixtures, that the trial court did not err in denying the motion for judgment of acquittal, and that there was sufficient evidence on which to base a conviction. United States v. Bolden, 169 U.S.App.D.C. 60, 514 F.2d 1301 (1975).

Accordingly, it is

ORDERED and ADJUDGED that the judgment of conviction be, and hereby is, affirmed.

FOR THE COURT:

/s/

ALAN I. HERMAN
Clerk of the Court

Copies to:

Honorable Tim Murphy

Clerk, Superior Court

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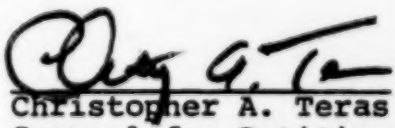
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of December, 1981, three copies of the foregoing Petition for a Writ of Certiorari to the District of Columbia Court of Appeals were hand-delivered to the office of John A. Terry, Esquire, Assistant United States Attorney, Suite 6425, United States Court House, Constitution Avenue and John Marshall Place, N.W., Washington, D.C. 20001, and to the office of the Solicitor General, Department of Justice, Suite 5143, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.



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